



Town of Provincetown  
Zoning Board of Appeals  
Town Hall, Provincetown, MA 02657

November 5, 2020

## Findings and Decision of the Zoning Board of Appeals

Case Number: ZBA 20-56  
Applicant/Owner: Shank Painter Associates, Inc.  
Property Address: 207 Route 6  
Assessor's ID: 7-3-21-0  
Deed Book: Book 2570, Page 249  
Zoning District: General Commercial Zoning District (GC)  
Zoning Board Members: Erik Borg  
Jeremy Callahan  
Peter Okun  
Quinn Taylor  
Daniel Wagner

### I. Introduction

The Applicant is petitioning the Zoning Board of Appeals seeking a Special Permit pursuant to Article 2, Sections 2470, Parking Requirements, 2630, Roofs, and 2640, Building Scale of the Zoning By-Laws to develop workforce housing, including requesting a waiver from parking requirements, to add a third story, and to allow an increase above the neighborhood average building scale of the proposed structure on the property located at 207 Route 6 (General Commercial Zone).

### II. Decision

**The Zoning Board of Appeals hereby grants Special Permit relief pursuant to the Zoning By-Law, Article 2, Sections 2470, Parking Requirements, 2630, Roofs, and 2640, Building Scale by vote of 5 in favor, 0 opposed and 0 abstaining.**

### III. General Findings

1. The Subject Property can be further defined 207 Route 6, Assessors Parcel ID: 7-3-21-0, located in the General Commercial Zoning District, and recorded at the Barnstable County Registry of Deeds Book 2570, Page 249.
2. The Property is located in the General Commercial (GC) zoning district.
3. The Property is 155,203± sq. ft. in size and improved with a warehouse/artist studio building.
4. The Property is located approximately 1,300± ft. from the Jerome Smith Road Public Parking Area and 1,600± ft. from the Fire Station Public Parking Area and the Grace Hall Public Parking Area.
5. The proposed Project includes the construction of a three (3) story structure which would contain 28 four (4) person dormitory units with a capacity of 112 persons, five (5) studio apartments, ten one (1) bedroom apartments and 1 two (2) bedroom apartment with a total occupancy maximum of 146 persons.
6. The project proposes 20 parking spaces with plans showing 17 spaces (11 garaged and 6 parking area) and 3 accessible spaces; plans depict interior bicycle spaces for 133 bicycles and exterior bicycle racks for 56 bicycles.
7. The neighborhood average scale is 21,632 cf. with a maximum allowable increase from the neighborhood average of 25% which is 27,041 cf.
8. The existing building within the subject property is approximately 150,000 cu. ft.; the proposed structure will be 203,192 cu. ft. or a 35% increase in scale over the existing building within the Property.
9. The proposed structure's scale is 203,192± cf. which is 651±% above the allowable increase from the neighborhood average scale. Scale calculations were also submitted by the Applicant for properties along Shank Painter Road in the GC zoning district which showed scales ranging from 43,000 cf. to 58,000 cf. to several over 60,000 cf., a couple over 70,000 cf., one over 100,000 cf. and one at 1,744,400 cf. located in the same zoning district as the proposed structure.
10. The first and second floors of the proposed building are designed to be 7,324 sq. ft. and 7,114 sq. ft. respectively, and the third floor has a smaller area of 5,170 sq. ft.; a smaller third floor area is partially indicative of the appearance of a 2½ story building.
11. The Select Board granted an Economic Development Permit for 9,645 gpd for this Project and the wastewater connection for the entire property to the Sewer System, including abandoning the existing on-site septic system, is anticipated to eliminate the possibility of any environmental degradation from wastewater discharge within the Property.
12. The Applicant submitted a project narrative and scale calculations with the application; a memorandum dated September 21, 2020 describes the additional materials submitted in support of the project, including a Section 5331 Development Impact Statement.
13. The Board held two public hearings on August 6, 2020 and October 1, 2020. Note that the hearings were held virtually in accordance with Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, March 23, 2020 Order imposing strict limitation on the number of people that may gather in one place, and Chapter 53 of the Acts of 2020. Attorney Lester J. Murphy represented the Applicant and was joined by Patrick Patrick, the principal/owner, Stacy Kanaga of Coastal Engineering, the project engineer, and Alison Alessi, the architect, who presented the Project and the Board provided an opportunity for all those attending the public hearing to be heard.

## 14. Plans included:

- a. Plan entitled “Plan Showing Existing Site Conditions” prepared for Shankpainter Associates, Inc. by Coastal Engineering Co. dated September 12, 2019 certified by John McElwee, PLS No. 33602, labelled Sheet C1.2.1 (24x36)
- b. Plan entitled “Plan Showing Proposed Site Layout and Materials” prepared for Shankpainter Associates, Inc. by Coastal Engineering Co. dated September 21, 2020 certified by Stacy R. Kanaga, PE No. 52475, labelled Sheet C2.1.1 (24x36)
- c. Plan entitled “Plan Showing Proposed Grading and Drainage” prepared for Shankpainter Associates, Inc. by Coastal Engineering Co. dated September 21, 2020 certified by Stacy R. Kanaga, PE No. 52475, labelled Sheet C2.1.1 (24x36)
- d. Plan set entitled “Workforce Housing: The Barracks 207 Route 6 Provincetown MA” prepared by A3 Architects, Inc. in 10 sheets (24x36), labeled A1.0 dated September 21, 2020; A1.1, A1.2, A1.3, A2.0, and A2.1 dated March 4, 2020; A3.0, A3.1, and A3.2 dated September 28, 2020.

IV. Applicable Law and Decision Criteria

## 1. Massachusetts General Laws Chapter 40A, Section 9 (Special Permits):

*Zoning ordinances or by-laws may provide that certain classes of special permits shall be issued by one special permit granting authority and others by another special permit granting authority as provided in the ordinance or by-law. Such special permit granting authority shall adopt and from time to time amend rules relative to the issuance of such permits, and shall file a copy of said rules in the office of the city or town clerk. Such rules shall prescribe a size, form, contents, style and number of copies of plans and specifications and the procedure for a submission and approval of such permits.*

## 2. Section 2470 Parking Requirements of the Zoning Bylaw

*All parking demand created by new structures or uses, and expansion or change of use in existing structures, shall be accommodated on the premises entirely off-street to be calculated in accordance with the following table, rounding up for each resulting fraction. The Zoning Board of Appeals may grant relief from this requirement with a Special Permit for multi-family developments of fewer than five dwelling units if lot size or configuration makes meeting this requirement physically impossible, and for any use may grant relief with a Special Permit upon determination that the applicant has met the criteria for granting under section 5300 and that special circumstances such as proximity to a municipal off-street parking lot render a lesser provision adequate for all parking needs. Art galleries shall be exempt from the requirement of providing off-street parking.*

## 3. 2630 Roofs

*A. Applicability: This section is applicable in all zoning districts.*

*B. Purpose: The streetscape and community character that exist in Provincetown are the result of the compatible relationships among historic roof styles resulting from an architectural heritage that spans three centuries. Part of that community character is based on the large number of buildings of modest size and bulk, generally not more than 2 and 1/2 stories. The purpose of this regulation is to enhance community character by limiting*

*the bulk above the second story and to mitigate potential negative impacts on adjacent properties.*

*C. Roof Configuration: Gable, Hip and Shed are the predominant roof forms in the Provincetown architectural tradition. Modifications of these roof configurations can transform the bulk of buildings. Therefore, above the second story of a building, limits are as follows:*

- 1) dormers cannot exceed coverage of 50% of the floor area directly below the contiguous roof in which the dormer will be located; and,*
- 2) knee walls above the floor plates cannot exceed three feet in height.*

*Roof configurations that exceed these limits are prohibited. Other roof forms exist that by design enclose more volume on the upper floor and would be considered a full story: mansard, gambrel, and arched or dome roof forms therefore are prohibited above the second story. Flat roof form is also prohibited above the second story, except on dormers. Nothing shall prohibit modified roof configurations or combinations of roof forms provided that they comply with Section 2560, the Dimensional Schedule. No existing gable roof shall be replaced with a different roof configuration without a Special Permit from the Board of Appeals, which shall specifically address, in addition to the requirements of Section 5330, the solar access available to neighboring structures (reference Chapter 637 of the Acts of 1985), and public safety including Fire Department facilities.*

*D. Building Height: The maximum height to be permitted in town shall be consistent with Section 2560 of the Provincetown Zoning By-Laws.*

*E. Relief under this Section: The Board of Appeals may grant a Special Permit deviating from the above standard if the ZBA finds that the deviation from the standard is in keeping with the standard criteria for granting a Special Permit, the objectives of the Local Comprehensive Plan and is appropriate for one of the following reasons:*

- 1. The function of the structure or the structure's importance to the community as a whole, justifies a different roof configuration.*
- 2. Other features of the proposed design are such that the deviation of the roof configuration is not disruptive to the character of the area.*

#### **4. Section 2640 E of the Zoning Bylaw**

*Discretionary approval for a deviation in building scale may be granted if the Board of Appeals finds that the deviation meets the standards for a Special Permit, under Article 5, Section 5300 and that the applicant demonstrates that the deviation is appropriate and meets one or more of the following criteria:*

- 1. The proposed building or addition is in keeping with the goals and objectives of the Local Comprehensive Plan.*
- 2. The building is an important structure to the community as a whole. Public buildings are logical candidates for this type of conditional approval. For example, the Pilgrim Monument is out of scale with everything in town, yet its value as a monument to the town's history and in giving identity to the town, makes it acceptable.*
- 3. The proposed building or addition by necessity must be large and that the location is suited for that larger scale use. For example, churches may be permitted uses in a residential district and their larger scale is often dictated by traditional architectural forms.*

4. *The building scale deviation is warranted due to the size of the parcel of land involved so as to discourage subdivision into smaller parcels and the proposed building or addition will not result in a structure that will disrupt the character of the neighborhood in which it is located.*
  5. *The proposed building or addition successfully integrates into its surroundings and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to, or views from, neighboring structures.*
  6. *The property is located in the Provincetown Historic District and the addition is consistent with the Historic District Guidelines and approval of the deviation would further the purpose and intent of the bylaw.*
5. Section 5330 of the Zoning Bylaw  
*Special Permits (other than those specified in Section 3420) shall be granted by the Special Permit Granting Authority only upon its written determination that the social, economic or other benefits of the proposal for the neighborhood or town outweigh any adverse effects such as hazard, congestion or environmental degradation.*

#### V. Specific Findings

1. There were approximately 32 letters in support and 9 letters objecting to the project.
2. That plans C.2.1.1 and C.2.2.1 show adjacent buildings relative to the Subject Property.
3. That plans C.2.2.1 shows proposed grading around the site and its relation to adjacent properties.
4. That plan A.3.2 shows initial proposed vegetative screening designed by Hawk Design, Inc. that is designed to decrease the visual impact on the adjacent properties.
5. That plans A.3.0 and A.3.1 show proposed structures in relation to properties at 6 and 12 Ships Way Extension confirming that the height of the new structure is comparable to neighboring structures, that it will not tower over them and that with both the grade differential and proposed screening, the visual impact on the adjacent properties is much less than that described by abutters.
6. That the proposed building includes garages in a basement level that is partially built into the landscape, integrating the structure into the natural topography and is sited in a manner that minimizes the appearance of mass from the streetscape and will not have a significant negative impact on the natural light to or views from neighboring residential structures as it is located north of the adjacent residential neighborhood.
7. That a separate scale analysis was submitted for properties near Shank Painter Road in the GC zone showing structures ranging from 43,000 cf. to 58,000 cf., to several over 60,000 cf., a couple over 70,000 cf., one over 100,000 cf., and one at 1,744,400 cf. in scale located in the vicinity of the proposed building; that the proposed building is not out of character for the GC zone; and that the proposed building will not be disruptive to the GC zone.
8. That the proposed project maintains adequate access/egress within the subject property, including access and egress to Route 6, and provides for the safe location of onsite utilities, and is unlikely to create hazards, congestion, or environmental degradation.

9. That the deviation from the roof standard is in keeping with the housing objectives of the Local Comprehensive Plan; is appropriate where the function of the structure provides workforce housing that is important to the community as a whole, and therefore justifies a different roof configuration; that the design of the building, including multiple facades, and step backs are intended so the building does not appear to be a solid three-story structure; and is not disruptive to the area, which includes the warehouse building on the site, as well as a warehouse building on an adjacent property.
  10. That the Project proposes 20 parking spaces (17 spaces and 3 accessible spaces) for 16 residential units (five studio apartments, ten 1-bedroom apartments, and one 2-bedroom apartment); plans depict interior bicycle spaces for 133 bicycles and exterior bicycle racks for 56 bicycles, for a total capacity of 189 bicycles for the anticipated occupancy of 146 persons, most of whom are anticipated to be occupying the 28 four-person workforce dormitory units; and that the Property is located approximately 1,300± ft. from the Jerome Smith Public Parking Area, and 1,600± ft. from the Fire Station Public Parking Area and the Grace Hall Public Parking Area; such that special circumstances, including providing workforce housing and proximity to municipal off-street parking lots, renders a lesser provision adequate for all parking needs.
  11. That the Project proposes dormitory-style, workforce housing that is: designed to be affordable for both seasonal staff, as well as year-round staff, offseason students, and other short-term tenants; and is in keeping with the housing goals and objectives of the Local Comprehensive Plan.
  12. As a result of the General and Specific Findings (Sections III-V), the Board finds that the social, economic or other benefits of the Project for the neighborhood or town outweigh any adverse effects such as hazard, congestion or environmental degradation.
- A. Waivers. No waivers are requested for the Project.

VI. Vote

ZBA 20-56:

Motion by Peter Okun to grant a Special Permit pursuant to Article 2, Sections 2470, Parking Requirements, 2630, Roofs, and 2640, Building Scale of the Zoning By-Laws to develop workforce housing, including the grant of a waiver from parking requirements, the grant of a waiver to add a third story, and the grant of a waiver to allow an increase above the neighborhood average building scale for the proposed Project on the property located at 207 Route 6 (General Commercial Zone). The Motion was seconded by Quinn Taylor.

**VOTE: By 5 in favor, 0 opposed, and 0 abstaining the Zoning Board of Appeals Approved this application.**

VII. Conditions

1. The Special Permit shall lapse twenty-four months following the grant thereof (plus such time required to pursue or await the determination of an appeal referred to in MGL Ch. 40A, Sec. 17) if a substantial use thereof or construction has not sooner commenced except for good cause as determined by the Board of Appeals.

SIGNED BY:

DATE OF FILING:

A copy of the application in this matter, bearing the stamp of this Board, the signatures of the sitting members or the designee, and the date of this decision, will be on file in the Provincetown Department of Community Development. The applicant is hereby put on notice that any deviation from the above referenced application shall invalidate this Decision and shall require further review by this Board. Furthermore, the Decision issued hereunder shall not be valid until recorded at the Registry of Deeds in Barnstable as provided in the Provincetown Zoning By-Law and G.L. ch. 40A.

Important: Any appeal from the decision of the Zoning Board of Appeals can be made only to the Court and must be made pursuant to MGL ch. 40A, § 17, as amended, and must be filed within twenty (20) days after the date of filing of the decision with the Town Clerk.

Note: or as such timeframes are suspended and extended pursuant to Section 17 of Chapter 53 of the Acts of 2020.